

Senate Bill No. 987

CHAPTER 833

An act to amend Sections 20199, 20235, 20969, 21002, 21004, 21221, 22772, and 75502 of, and to add Sections 9351.4, 20065.5, and 75004.5 to, the Government Code, relating to public employees' retirement.

[Approved by Governor September 30, 2012. Filed with
Secretary of State September 30, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 987, Negrete McLeod. Public employees' retirement.

(1) The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. Existing law also establishes the Judges' Retirement System and the Judges' Retirement System II which provide pension benefits to elected judges and the Legislators' Retirement System which provides pension benefits to elective officers of the state other than judges and to legislative statutory officers.

This bill would provide that all references to "spouse," "surviving spouse," or "marriage" in these provisions apply equally to a domestic partner or domestic partnership, as defined, and all rights and responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner, as specified.

(2) PERL provides that credit for service generally is accrued based upon service rendered and compensated in a fiscal year, and that time during which a member is absent without compensation is not allowed for computing service. Further, PERL provides that, when a member is subject to mandatory furloughs, as defined, the member's credits for service and compensation earnable are based on the amounts that would have been credited had the employee not been subject to mandatory furloughs.

This bill would expand the definition of mandatory furlough to include those employees subject to mandatory furloughs under a specified provision.

(3) PERL defines "leave of absence" to include absence from state service because of illness that arose out of and in the course of employment and for which the member received temporary disability benefits during the absence and did not receive full compensation, as specified. PERL authorizes a member who returns to active service following an employer-approved uncompensated leave of absence because of his or her serious illness to purchase service credit for that period of absence, as specified.

This bill would clarify that definition to include absence from state service because of illness or injury that arose out of and in the course of employment, and would authorize the purchase of service credit following an

employer-approved uncompensated leave of absence because of the member's serious illness or injury.

(4) Existing law directs the Board of Administration of PERS to establish a building account from the retirement fund to use for acquiring real property, and for building, remodeling, maintaining, repairing, and improving that property.

This bill would permit funds in the above-described building account to be used for other necessary operational expenses.

(5) Existing law requires the Board of Administration of PERS to submit a quarterly review of the system's assets, as specified, to the Legislature. This review must include information on the time-weighted and dollar-weighted return on a 5-year, 3-year, 2-year, and 1-year basis.

This bill would eliminate the requirement that the quarterly review described above include information on the time-weighted and dollar-weighted return on a 2-year basis.

(6) Existing law generally prohibits a person who has been retired under PERS from serving without reinstatement from retirement, except as specified. Existing law authorizes a retired person to serve without reinstatement upon appointment to specified positions, and prohibits those appointments from exceeding 960 hours in any fiscal year. Under existing law, a retired annuitant cannot receive any benefit, incentive, compensation in lieu of benefits, or any other form of compensation in addition to the prescribed hourly pay rate.

This bill would clarify that the above-described work hour limits and ban on additional benefits apply only to retired annuitants working in a vacant position for a PERS contracting agency.

(7) Existing law defines an employee for purposes of the Public Employees' Medical and Hospital Care Act, which governs health care coverage available to public employees. This definition includes an employee who is employed by a contracting agency, including an officer or official of a contracting agency, as defined, if that officer or official participates in the employer's retirement system.

This bill would revise that definition to include only those employees who are employed by a contracting agency and participate in a publicly funded retirement system provided by that agency, as well as officers or officials of a contracting agency. The bill would also revise that definition by including officers or officials of a contracting agency regardless of whether those officers or officials participate in the employer's retirement system.

The people of the State of California do enact as follows:

SECTION 1. Section 9351.4 is added to the Government Code, to read:

9351.4. All references to "spouse," "surviving spouse," or "marriage" in this chapter apply equally to a domestic partner or domestic partnership, as defined in Section 297 of the Family Code, and all rights and

responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner to the extent provided by Section 297.5 of the Family Code.

SEC. 2. Section 20065.5 is added to the Government Code, to read:

20065.5. All references to “spouse,” “surviving spouse,” or “marriage” in this part apply equally to a domestic partner or domestic partnership, as defined in Section 297 of the Family Code, and all rights and responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner to the extent provided by Section 297.5 of the Family Code.

SEC. 3. Section 20199 of the Government Code is amended to read:

20199. The board shall establish a building account for the transfer of money that is continuously appropriated for that purpose from the retirement fund for the cost of the acquisition of real property, the construction or remodeling of buildings and improvements thereon, the maintenance, repair, and improvement thereof, and for other necessary operational expenses.

For accounting purposes the board shall pay to the building account an amount sufficient to repay all costs for construction and maintenance of space used by the board. Other amounts or contributions received shall be deposited in the building account and disbursed as provided in this section.

The board may contract with the Department of General Services for the purchase of insurance against loss of, or damage to, the property or the loss of use or occupancy of the building, liability insurance and other insurance as is customarily carried on state office buildings. Premiums for the insurance shall be paid from the building account.

Money in the building account that is in excess of current needs shall be paid into the retirement fund monthly. The land, building, equipment, and improvements thereon, shall constitute an asset in the retirement fund and shall be carried on the books thereof as such in accordance with generally accepted accounting practices.

SEC. 4. Section 20235 of the Government Code is amended to read:

20235. (a) The board shall submit a review of this system’s assets to the Legislature on a quarterly basis. The report shall also be made available to all contracting agencies. The report shall do both of the following:

- (1) Discuss this system’s portfolio and contain the following information:
 - (A) Concentration, current holdings at cost and market value, of equities.
 - (B) Concentration, current holdings at cost and market value, of fixed income instruments.
 - (C) Current holdings at cost and market value of real estate equities.
 - (D) Current holdings at cost and market value of mortgages.
 - (E) Options and forward commitments.
 - (F) Cash and cash equivalents.
- (2) Disclose the following information on the rate of return of the fund by type of asset:
 - (A) Time-weighted return on a five-year, three-year, and one-year basis.
 - (B) Dollar-weighted return on a five-year, three-year, and one-year basis.

(C) Summary of performance of an alternative theoretical portfolio containing all investments and performance of comparable universes and other indexes.

(b) Upon written request from a contracting agency that does not participate in a risk pool, the board shall submit additional quarterly reports to the contracting agency as described in this subdivision. For the first quarter of the fiscal year, the report shall be submitted within 120 days after the end of the quarter and shall contain the agency's beginning balance for the fiscal year. For the second and third quarters of the fiscal year, the report shall be submitted to the contracting agency within 90 days after the end of the quarter. For the fourth quarter of the fiscal year, the report shall be submitted within 180 days after the end of the quarter and shall contain the agency's balance as of the end of the fiscal year. The report shall include, but need not be limited to, the following:

(1) All contributions made to the system by the contracting agency and its employees. The contributions shall be reported as the amounts paid and the amounts due from the contracting agency for both employer contributions and employee contributions.

(2) All benefits paid by the system to members of the contracting agency and their survivors and beneficiaries, including payments on account of pension, death, and disability benefits, and withdrawals of contributions. The benefits shall be reported as the total monthly allowances paid to retirees, survivors, and beneficiaries; the amount of total refunds paid; and the amount of any other lump sums paid.

(3) An amount that represents any miscellaneous adjustments, including transfers in and out.

(4) That quarter's portion of the agency's estimated share of the system's administrative costs that shall be assessed at the end of the fiscal year.

(5) The rate of return for the system during the quarter as reported to the board by the investment committee.

(6) The estimated interest applied to the agency's account as determined by the system. For purposes of this paragraph, the "estimated interest applied" means the estimate of the annual net earnings, as defined in Section 20052, and is subject to adjustment at the end of the fiscal year based on the actual dollar-weighted amount of investment return that shall be credited to the agency's account for the fiscal year. The report for the fourth quarter of the fiscal year shall also include the actual dollar-weighted amount of investment return for the fiscal year that shall be credited to the contracting agency's account.

(c) Upon written request from a contracting agency that participates in a risk pool, the board shall submit to the contracting agency quarterly reports that reflect the total contributions made to the system by agencies in the risk pool, the total benefits paid by the system with respect to the risk pool, the total estimated share of administrative costs for the risk pool, and the total estimated share of investment returns for the risk pool.

(d) A contracting agency requesting quarterly reports pursuant to subdivision (b) or (c) shall pay a fee, in an amount determined by the board,

not to exceed one thousand five hundred dollars (\$1,500) quarterly per agency while the manual process of collecting the information is in use.

(e) Any report received by a contracting agency pursuant to this section shall be made available by the agency to any employee organization that represents the agency's employees and that requests a copy of the report.

SEC. 5. Section 20969 of the Government Code is amended to read:

20969. (a) For all retirement purposes, including benefit eligibility and calculations of retirement allowances for members employed by the state that are subject to mandatory furloughs, credit for service and compensation earnable shall be based on the amount that would have been credited had the employee not been subject to mandatory furloughs.

(b) For the purposes of this section, "mandatory furloughs" means time during which a member is directed to be absent from work without pay, pursuant to Section 19849, or during which a member identified below is directed to be absent from work without pay as a consequence of an Executive order in the 2008–09, 2009–10, and 2010–11 fiscal years:

(1) A state employee subject to an Executive order requiring a mandatory furlough for state employees.

(2) A person who is excepted from the definition of "state employee" in subdivision (c) of Section 3513, or who is an officer or employee of the executive branch of state government who is not a member of the civil service, and who is subject to an Executive order requiring a mandatory furlough for state employees.

(3) A state employee, a person who is excepted from the definition of "state employee" in subdivision (c) of Section 3513, or a person who is an officer or employee of the executive branch of state government who is not a member of the civil service, and whose employer is not under the direct executive authority of the Governor, and who is subject to a mandatory furlough imposed by his or her employer in response to encouragement in an Executive order.

(c) An employer of an employee identified in subdivision (b) shall notify the board of the terms and conditions of any mandatory furlough, including, but not limited to, the amount of mandatory furlough time imposed on employees during a reporting period and the date on which the mandatory furlough ends. The employer and the Controller shall provide any additional information as the board may require to implement this section.

SEC. 6. Section 21002 of the Government Code is amended to read:

21002. A member who returns to active service following an employer-approved uncompensated leave of absence because of his or her serious illness or injury may purchase service credit for that period of absence upon the payment of contributions as specified in Sections 21050 and 21052. The purchase of additional service credit pursuant to this section shall not reduce the amount of service credit that the member is eligible to purchase pursuant to this chapter. A member may purchase service credit pursuant to this section for a leave of absence that occurred either before or after the effective date of these provisions.

SEC. 7. Section 21004 of the Government Code is amended to read:

21004. “Leave of absence” also means absence from state service because of illness or injury that arose out of and in the course of employment and for which the member received temporary disability benefits under the Labor Code during the absence and did not receive full compensation as distinguished from the disability benefits for the period of absence.

SEC. 8. Section 21221 of the Government Code is amended to read:

21221. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system, as follows:

(a) As a member of any board, commission, or advisory committee, upon appointment by the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, director of a state department, or the governing board of the contracting agency. However, the appointment shall not be deemed employment within the meaning of Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code, and shall not provide a basis for the payment of workers’ compensation to a retired state employee or to his or her dependents.

(b) As a school crossing guard.

(c) As a juror or election officer.

(d) As an elective officer on and after September 15, 1961. However, all rights and immunities which may have accrued under Section 21229 as it read prior to that section’s repeal during the 1969 Regular Session of the Legislature are hereby preserved.

(e) As an appointive member of the governing body of a contracting agency. However, the compensation for that office shall not exceed one hundred dollars (\$100) per month.

(f) Upon appointment by the Legislature, or either house, or a legislative committee to a position deemed by the appointing power to be temporary in nature.

(g) Upon employment by a contracting agency to a position found by the governing body, by resolution, to be available because of a leave of absence granted to a person on payroll status for a period not to exceed one year and found by the governing body to require specialized skills. The temporary employment shall be terminated at the end of the leave of absence. Appointments under this section shall be reported to the board and shall be accompanied by the resolution adopted by the governing body.

(h) Upon interim appointment by the governing body of a contracting agency to a vacant position during recruitment for a permanent appointment and deemed by the governing body to require specialized skills or during an emergency to prevent stoppage of public business. A retired person shall only be appointed once to this vacant position. These appointments, including any made concurrently pursuant to Section 21224 or 21229, shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the interim appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the vacant position divided by 173.333 to equal an hourly rate. A retired person appointed to a vacant position pursuant to this subdivision shall not receive any benefits,

incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate. A retired annuitant appointed pursuant to this subdivision shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.

(i) Upon appointment by the Administrative Director of the Courts to the position of Court Security Coordinator, a position deemed temporary in nature and requiring the specialized skills and experience of a retired professional peace officer.

SEC. 9. Section 22772 of the Government Code is amended to read:

22772. (a) “Employee” means:

(1) An officer or employee of the state or of any agency, department, authority, or instrumentality of the state, including the University of California.

(2) An employee who is employed by a contracting agency and participates in a publicly funded retirement system provided by the contracting agency, or an officer or official of a contracting agency.

(3) An annuitant receiving a retirement allowance pursuant to Section 21228 who is employed by a contracting agency.

(4) A teaching associate, lecturer, coach, or interpreter employed by the California State University who is appointed to work in an academic year classification for at least six weighted teaching units for one semester, or for at least six weighted teaching units for two or more consecutive quarter terms. This paragraph does not apply to a state member employed by the California State University, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) All employees in job classes specified in subdivision (a) of Section 14876.

(b) Except as otherwise provided by this part, “employee” does not include any of the following:

(1) A person employed on an intermittent, irregular, or less than half-time basis, or an employee similarly situated.

(2) A National Guard member described in Section 20380.5.

SEC. 10. Section 75004.5 is added to the Government Code, to read:

75004.5. All references to “spouse,” “surviving spouse,” or “marriage” in this chapter apply equally to a domestic partner or domestic partnership, as defined in Section 297 of the Family Code, and all rights and responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner to the extent provided by Section 297.5 of the Family Code.

SEC. 11. Section 75502 of the Government Code is amended to read:

75502. (a) “Judge” means a justice of the Supreme Court or of a court of appeal, or a judge of a superior court, municipal court, or justice court who is first elected or appointed to judicial office on or after November 9, 1994, and is not a member of the Judges’ Retirement System pursuant to Chapter 11 (commencing with Section 75000). A retired judge does not

acquire status as a judge for the purposes of this chapter by reason of designation as a temporary judge of, or assignment by the Chairperson of the Judicial Council to, any of these courts.

A former member of the Judges' Retirement System under Section 75002 who withdrew his or her contributions upon leaving office, and who takes judicial office on or after November 9, 1994, becomes a member of the system existing under Chapter 11 (commencing with Section 75000) and does not become a member of the Judges' Retirement System II. No person shall be a member of the Judges' Retirement System II who is or ever has been a member of the Judges' Retirement System pursuant to Chapter 11 (commencing with Section 75000).

(b) "System" means the Judges' Retirement System II established by this chapter.

(c) "Service" means the period of time a judge received a salary and made contributions to the system by reason of holding office as a judge of any one or more of the courts of this state specified in subdivision (a), computed in years and fractions of years.

(d) "Final compensation" means the average monthly salary of a judge during the 12 months immediately preceding his or her retirement from or otherwise leaving judicial office and as limited by Section 75572.

(e) "Benefit factor" means the percentage used in calculating a judge's monthly retirement allowance under Section 75522.

(f) "Contributions" means the accumulated deductions from the judge's salary under Sections 75601 and 75602. References to payment to a judge of his or her contributions or to the determination of a judge's and spouse's shares in the contributions include both the contributions and interest thereon at the rates determined by the Board of Administration of the Public Employees' Retirement System.

(g) "Salary" means the compensation received by a judge as the emolument of the office of judge, but does not include any additional compensation received by reason of designation as a temporary judge or assignment by the Chairperson of the Judicial Council or the additional compensation pursuant to Section 68203.1.

(h) "Board" means the Board of Administration of the Public Employees' Retirement System.

(i) "Fund" or "retirement fund" means the Judges' Retirement System II Fund established pursuant to Section 75600.

(j) All references to "spouse," "surviving spouse," or "marriage" in this chapter apply equally to a domestic partner or domestic partnership, as defined in Section 297 of the Family Code, and all rights and responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner to the extent provided by Section 297.5 of the Family Code.